

**MONTANA DEPARTMENT OF REVENUE, LIQUOR CONTROL DIVISION
COMPETITIVE BIDDING PROCESS
TERMS AND CONDITIONS**

IN CONSIDERATION of the opportunity to bid on the opportunity to apply for an all-beverage, restaurant beer and wine, or retail beer license, you, as the bidder/legal entity, hereby agree to the terms and conditions as follows:

As required by Senate Bill 5 enacted by the 65th Montana Legislature during the November 2017 Special Session, the Montana Department of Revenue (Department) uses a competitive bidding process to determine the bidder/legal entity afforded the opportunity to apply for an all-beverage, restaurant beer and wine, or retail beer license.

1. SUBMITTING A BID

To enter the competitive bidding process, the bidder/legal entity shall: (i) create an ePass Montana account; (ii) obtain and submit an irrevocable letter of credit from a financial institution equal to or greater than the bid amount establishing the Department as the beneficiary of the bid amount; and (iii) complete and submit before the close of the competitive bidding process the competitive bid form provided by the Department.

Acceptable irrevocable letter of credit content includes the following:

This irrevocable letter of credit in favor of the Montana Department of Revenue (beneficiary) is to confirm that [bank] has approved [bidder] for a [bid amount] line of credit for the purchase of a(n) [type of license] to be located in [quota area] should they be the successful winner of the competitive bidding. [Bank] guarantees that it will not withdraw this line of credit or cancel this letter. [Bank's] commitment under the line of credit will expire on [one year from the date of competitive bidding closing].

2. MINIMUM BID

The Department shall determine the minimum bid based on 75% of the market value of the same type of licenses (all-beverages, restaurant beer and wine, or retail beer) with similar privileges in the quota area or similar quota areas.

3. HIGHEST BIDDER

The Department shall notify the bidder/legal entity with the highest bid via certified mail sent to the address of the bidder/legal entity provided on the competitive bid form.

The highest bidder shall: (i) complete and submit an application provided by the Department and applicable fees for the license within 60 days of the Department's notification of being the highest

bidder (the highest bidder may request in writing an additional 60 days to complete and submit an application); (ii) pay the bid amount prior to the license being approved; (iii) meet all other requirements to own a license (all-beverage, restaurant beer and wine, or retail beer); and (iv) commence business within one year of the Department's notification unless the Department grants an extension because commencement was delayed by circumstances beyond the applicant's control.

If the highest bidder does not submit an application, the Department shall offer the license to the next highest bidder. Failure to submit an application may result in a monetary penalty of no more than 5% of the bidder/legal entity's bid amount. If the highest bidder is not approved to own the license, the Department shall offer the license to the next highest bidder. The next highest bidder must comply with the highest bidder requirements in this section.

4. TIED BIDS

In the case of a tie for the highest bid, the tied bidders may submit new bids. The Department shall notify the tied bidders via certified mail sent to the address of the bidder/legal entity provided on the competitive bid form. The tied bidder shall have 15 calendar days from the date of mailing of the notice of tied bid to submit a new bid. The minimum bid is set at the tied bid amount. To submit a new bid, a tied bidder shall (i) obtain and submit an irrevocable letter of credit from a financial institution equal to or greater than the bid amount establishing the Department as the beneficiary of the bid amount and (ii) complete and submit the competitive bid form provided by the Department.

5. IRREVOCABLE BIDS

Bids are not revocable. Once a bid is placed, it cannot be removed.

6. MULTIPLE BIDS

Regardless of the timing of bids, in the event a bidder/legal entity places multiple bids, the Department shall accept the highest bid placed by the bidder/legal entity. Bids made by a bidder/legal entity which are lower than the bidder/legal entity's highest bid shall not be considered.

7. LICENSE SUBJECT TO FORFEITURE

The successful applicant is subject to forfeiture of the license and the original license fee if the successful applicant: (i) transfers the awarded license to another person or business entity after receiving the license unless that transfer is due to a death of an owner; (ii) does not use the license within one year of receiving the license, unless the Department grants an extension because commencement was delayed by circumstances beyond the applicant's control, or stops using the license within five years; or (iii) proposes a location for the license that had the same license type

within the previous twelve (12) months. If a license is forfeited, the Department shall offer the license to the next eligible highest bidder in the competitive bidding process.

8. CONFIDENTIALITY

As required by Senate Bill 5 enacted by the 65th Montana Legislature during the November 2017 Special Session, the Department shall keep confidential the identify of bidders, number of bids, and bid amounts until the competitive bidding process is complete and the highest bidder has been approved for licensure.

9. COPYRIGHT

The Department retains the copyright in the competitive bid form, its logos and design marks, and all documents made available to you through your use of the competitive bid process and competitive bid form.

10. NO WARRANTIES

The competitive bidding process is provided “as is” without warranty of any kind, whether express or implied. To the extent permitted by applicable law, all implied warranties, including merchantability and fitness for a particular purpose, are hereby expressly disclaimed. The Department does not warrant the accuracy or completeness of the competitive bidding process or competitive bid form, or that the competitive bidding process or competitive bid form will function without error, failure, or interruption.

11. LIMITATION OF LIABILITY

The Department assumes no responsibility for and under no circumstances will the Department be liable to any person or business entity for any direct, indirect, special, incidental, consequential or other damages based on your participation in the competitive bidding process, including for: (i) technical failures of any kind, including failure of the Internet, the competitive bid form, any problems, failure or technical malfunction of any telephone network or lines, online or electronic systems, servers, access providers, computer hardware or software, incomplete, garbled or delayed internet/e-mail computer or mobile device transmissions on account of technical problems or traffic congestion on the Internet or at any website, or any combination thereof or other failures related to hardware, software, or virus; (ii) any injury, loss, or damage of any kind which may be caused, directly or indirectly, in whole or in part, from your participation in the competitive bid process, including any use, misuse, or inability to perfect or use any license or any component thereof, changes to law or government operations or policies that may affect the value of a license; (iii) any use of the competitive bid process or competitive bid form, or any other website to which the competitive bid process or competitive bid form is linked (including any injury or damage to your or any other person’s computer or mobile device relating to or resulting from participation or downloading any materials related to the competitive bid process; or (iv) your failure to abide by

these Terms and Conditions. The limitations of liability set out in the section apply, without limitation, to any lost profits, business interruption or loss of programs or information and will apply even if the Department has been specifically advised of the possibility of such damages.

12. DISCONTINUANCE/AMENDMENT OF COMPETITIVE BID FORM

The Department may discontinue or amend the competitive bid form at any time without giving you notice.

13. REMEDIES AVAILABLE TO DEPARTMENT

If you breach any of these Terms and Conditions, the Department, in its sole discretion, may take any steps that it determines necessary, including but not limited to a warning or removal of your bid.

14. CANCELLATION OF COMPETITIVE BID PROCESS

The Department, in its sole discretion, may cancel a scheduled competitive bid process prior to the close of the competitive bidding process for any reason, including but not limited to acts of God, mistake, or fraud.

15. ADDITIONAL CONDITIONS

Any additional conditions that apply to this competitive bid process will either be contained in the description of the available license or may be appended to these Terms and Conditions as Appendix A.

16. ACCEPTANCE

These Terms and Conditions may be accepted by the bidder/legal entity by completing the competitive bid process and submitting a bid.